UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

NEW AGE PRODUCTS, INC., Plaintiff, vs. PROGRESSIVE INTERNATIONAL CORPORATION, Defendants.	No. 96 2129 J (CGA) Deposition of RODERICK THOMPSON

TAKEN ON: Friday, April 11, 1997

TAKEN AT: 750 B Street, Suite 2100
San Diego, California

REPORTED BY: Kathleen A. Powell
CSR No. 2778

there.

Q. Do you have any recollection of what the Rockwell hardness or the flexural modulus or all that stuff was of this material?

A. No.

Q. It was never tested for that?

A. Well, I'm sure it was tested for that. I just wasn't interested or privy to or have the results of those.

Q. Who would?

A. Dave Fox. He was handling that.

Q. Who was handling the advertising and all that?

A. We had a gal there, Laura King, who handled all that stuff.

Q. She is no longer there?

A. No.

Q. You moved on to another iteration of the project?

A. Pardon?

Q. You moved on to another development of the product from what's --

A. Upgraded it.

Q. Upgraded it?

A. Uh-huh, I guess you'd say.

Q. Can you describe the upgraded product?

A. Gray, thicker.

Q. Do you recall how thick?

A. I can only guess. I think it was around 20 mil.

We didn't have everybody send us a sample every time we called them and ask them if they could make what we were looking for.

Understand I didn't do all the bird dogging on this. I did in the beginning and turned it over to Dave Fox at Schneider Plastics and he did most of the calling around and looked at the samples and things like that.

Q. Was there any formal testing --

A. I'm sure, yeah.

Q. -- at the shop by New Age?

A. Everything was tested, but see you're asking me questions I can't really give you -- the answer is yes, there was testing, but I wasn't part of the testing.

Q. What was the nature of the testing as far as --

A. Everything to the hardness, to the modulus to the flexibility. All the characteristics of the plastic.

Q. It was tested at Schneider?

A. No, I don't believe they had the capabilities to test them there. I don't know what capabilities they had. They have a pretty nice lab there, but I don't believe they had the capabilities to totally test it. I believe they had it done someplace. I just don't know that.

Q. But that's not something you were directly involved in?

A. No.

Q. Schneider has a lab?

A. Had a -- they had a -- a -- well, when you say lab, I wouldn't call it a lab, but it was a room where they

Q. You don't think that --

A. No, not at all. Never even saw their mat. The changes in the thickness were not made because we saw somebody else's product and said "Let's change it," because there wasn't really much competition at that time. The changes were made in our own development and improvement.

Q. The patent lists a number of properties of the plastic that is specified as a polypropylene obtained or manufactured by Rexene Resins. Do you recall --

A. Now I do, yeah, Rexene. They supplied the resin.

Q. That would have gone to Imperial at that time?

A. That went to Witt, as I recall.

Q. To Witt?

A. As I recall.

Q. These values, as far as you recollect, did they come from Rexene?

A. Oh, the ones in the patent?

Q. Yeah.

A. I don't know where they came from. I really don't. See, I didn't write all this stuff. Understand, this the patent was done by Neil's office. I didn't write any of this stuff at all because I don't even understand it.

Q. What about the language in the patent about five ounces of being supported at 10 inches, so the plastic should be strong enough that when you flexed it, it should support five ounces.

Do you recall any kind of testing done to

DECLARATION OF CHRISTINE WRIGHT

I, Christine Wright, state that:

1. I am currently employed by Rapra Technology, Ltd. of the United Kingdom, and am familiar with the records and practices of that company.

2. Rapra periodically publishes abstracts of various pre-existing technical publications received from various sources, which abstracts are also available on computer on-line services such as Dialog in the United States.

3. Rapra maintains a collection of the original complete printed items which are abstracted in its publications and on request provides copies of any of these items to members of the public. (Within the provisions of UK Copyright laws.)

4. Attached as Exhibit 1 is a true copy of Rapra 00181471, which is a printed company brochure for Stanley Smith & Co. Plastics Ltd., which item from my examination of Rapra records, was received by Rapra on July 16, 1990.

5. Attached as Exhibit 2 is a true copy of Rapra 00448836, which is printed trade literature of Amari Plastics PLC, which item from my examination of Rapra records, was received by Rapra on June 25, 1991.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Date: 20th Aug. 1997 C. A. Wright

Christine Wright

Materials	Properties	ASTM test method	Polypropylene (Cont'd)					
			Homopolymer (cont'd)				Copolymer	
			42% directionalized glass mat		Impact modified 40% mica-filled	EMI shielding (conductive); 30% PAN carbon fiber	Unfilled	Unfilled, impact-modified
			Parallel	Transverse				
Processing	1a. Melt flow (mg./10 min.)	D1238					0.8-44.0	
	1. Melting temperature, °C. T_m (crystalline)		168	168	168	168	150-175	150-168
	T_g (amorphous)						−20	−20
	2. Processing temperature range, °F. (C = compression; T = transfer; I = injection; E = extrusion)		C: 420-440	C: 420-440	I: 350-470	I: 380-470	I: 375-550 E: 400-500	I: 390-500 E: 400-500
	3. Molding pressure range, 10^3 p.s.i.		1-2	1-2			10-20	10-20
	4. Compression ratio						2-2.4	2-2.4
	5. Mold (linear) shrinkage, in./in.	D955	0.0005-0.0015	0.0025-0.0035	0.007-0.008	0.001-0.003	0.010-0.025	0.010-0.025
Mechanical	6. Tensile strength at break, p.s.i.	D638[b]	32,200	10,000	4500	6800	4000-5500	3500-5000
	7. Elongation at break, %	D638[b]	2.1	2.4	4	0.5	200-500	200-700
	8. Tensile yield strength, p.s.i.	D638[b]	32,200	10,000			3000-4300	1600-4000
	9. Compressive strength (rupture or yield), p.s.i.	D695					3500-8000	3500-6000
	10. Flexural strength (rupture or yield), p.s.i.	D790	43,180	22,785	7000	9000	5000-7000	4000-6000
	11. Tensile modulus, 10^3 p.s.i.	D638[b]	1400	705	700	1750	130-160	50-150
	12. Compressive modulus, 10^3 p.s.i.	D695						
	13. Flexural modulus, 10^3 p.s.i. 73° F.	D790	1375	740	600	1650	130-200	60-160
	200° F.	D790					40	
	250° F.	D790					30	
	300° F.	D790						
	14. Izod impact, ft.-lb./in. of notch (⅛-in. thick specimen)	D256A			0.7	1.1	1.1-14.0	2.2-No break
	15. Hardness Rockwell	D785					R65-96	R50-60
	Shore/Barcol	D2240/ D2583					Shore D70-73	Shore D45-55
Thermal	16. Coef. of linear thermal expansion, 10^{-5} in./in./°C.	D696	14	22			68-95	68-95
	17. Deflection temperature under flexural load, °F. 264 p.s.i.	D648	310	310	205	245	130-140	115-135
	66 p.s.i.	D648					165-220	167-192
	18. Thermal conductivity, 10^{-4} cal.-cm./sec.-cm.^{2}-°C.	C177					3.5-4.0	3.5-4.0
Physical	19. Specific gravity	D792	1.21	1.21	1.23	1.04	0.890-0.905	0.880-0.905
	20. Water absorption (⅛-in. thick specimen), % 24 hr.	D570				0.12	0.03	0.03
	Saturation	D570						
	21. Dielectric strength (⅛-in. thick specimen), short time, v./mil	D149					600	500
	SUPPLIERS[a]		Azdel	Azdel	Akzo; Ferro Corp.; M.A. Polymers; Polifil; Schulman	Akzo; ICI Advanced Materials; RTP	Aristech Chem.; Bamberger Polymers; Eastman; Exxon; Ferro Corp.; Fina; Himont USA—Adv. Mat'l.; M.A. Polymers; Monmouth; Phillips; Quantum, USI; Rexene; Schulman; Shell; Shuman; Solvay Polymers; Wash. Penn	Exxon; Himont USA—Adv. Mat'l.; Huntsman Monmouth; M.A. Polymers; Phillips; Quantum, USI; Rexene; Schulman; Solvay Polymers; Wash. Penn

Materials	Properties	Polypropylene (Cont'd)					Polystyrene and styrene copolymers (see also TPE)			
		Copolymer (Cont'd)					Polystyrene homopolymers			
		10-20% glass fiber-reinforced	30-40% glass fiber-reinforced	10-40% talc-filled	10-40% calcium carbonate-filled	Polyallomer	High and medium flow	Heat-resistant	30% long and short glass fiber-reinforced	20% long and short glass fiber-reinforced
Processing	1a.	0.1-20	0.1-20	0.1-30	0.1-30					
	1.	160-168	160-168			120-135				
							74-105	100-110	110-120	115
	2.	I: 350-480	I: 350-480	I: 350-470 E: 425-475	I: 350-470	I: 430-445	C: 300-400 I: 350-500 E: 350-500	C: 300-400 I: 350-500 E: 350-500	I: 400-460	I: 400-550
	3.			15-20	15-20	1-2	5-20	5-20		10-20
	4.			2-2.5	2-2.5		3	3-5		
	5.	0.003-0.01	0.001-0.01	0.009-0.014	0.008-0.014	0.010-0.020	0.004-0.007	0.004-0.007	0.001-0.002	0.001-0.003
Mechanical	6.	5000-8000	6000-10,000	3000-3775	2500-3465	3000-3800	5200-7500	6440-8200	11,000-13,000	10,000-12,000
	7.	3.0-4.0	2.2-3.0	20	40-50	400-500	1.2-2.5	2.0-3.6	1-1.2	1.0-1.3
	8.			3100-3800	2700-3800	3000-3400		6440-8150		
	9.	5500-6600	5400-5700				12,000-13,000	13,000-14,000	16,500-17,500	16,000-17,000
	10.	7000-11,000	9000-15,000	4500-5100	4000-6500		10,000-14,800	13,000-14,000	14,000-20,000	14,000-18,000
	11.				3500		330-475	450-485	1200-1300	900-1200
	12.						480-490	495-500		
	13.	355-510	600-960	210-400	200-370	70-110	380-490	450-500	1200	950-1100
	14.	0.95-2.7	0.9-3.0	0.6-4.0	0.7-2.0	1.7-3.8	0.35-0.45	0.4-0.45	0.9-3.0	0.9-2.5
	15.	R100-103	R104-105	R83-88	R81-89	R50-85	M60-75	M75-84	M85-95	M80-95, R119
			Shore D45-55							
Thermal	16.					83-100	50-83	68-85	20	39.6-40
	17.	260-280	280	132-165	116-155	124-133	169-202	194-217	215-220	200-220
		305	310	210-260	170-235	165-192	155-204	200-224	225-230	220-230
Physical	18.					2-4	3.0	3.0		5.9
	19.	0.98-1.04	1.11-1.21	0.97-1.24	0.97-1.24	0.896-0.899	1.04-1.05	1.04-1.05	1.29	1.20
	20.	0.01	0.01	0.02	0.02	<0.01	0.01-0.03	0.01	0.09	0.07-0.01
							0.01-0.03	0.01		0.3
	21.					800	500-575	500-525	450	425
	SUPPLIERS[a]	Akzo; Ferro Corp.; Himont USA—Adv. Mat'l.; ICI Advanced Materials; M.A. Polymers; Polifil; RTP; Schulman	Akzo; Ferro Corp.; Himont USA—Adv. Mat'l.; ICI Advanced Materials; M.A. Polymers; Polifil; RTP; Schulman	Akzo; Eastman; Ferro Corp.; Himont USA—Adv. Mat'l.; M.A. Polymers; Polifil; Polycom Huntsman; Quantum, USI; RTP; Rexene; Schulman	Akzo; Eastman; Ferro Corp.; Himont USA—Adv. Mat'l.; M.A. Polymers; Polycom Huntsman; Polifil; RTP; Rexene; Schulman; Wash. Penn	Eastman; Rexene	A & E Plastics; Amoco Chemicals; Bamberger Polymers; Chevron; Dow Plastics; Fina; Hammond; Huntsman; Mobil; Monsanto; Schulman; USS Chem.	A & E Plastics; Amoco Chemicals; Chevron; Dow Plastics; Fina; Hammond; Huntsman; Ivex; Mobil; Monsanto; USS Chem.	Akzo; M.A. Polymers; RTP	Akzo; Ferro Corp.; Ferro Eng. Therm.; ICI Advanced Materials; M.A. Polymers; Mobil; RTP; Thermofil

a—See the Buyers' Guide, p. 681, for additional suppliers of specialty materials and custom compounds.
b—Tensile test method varies with material: D638 is standard for thermoplastics; D651 for rigid thermosetting plastics; D412 for elastomeric plastics; D882 for thin plastics sheeting.
c—Dry, as molded (approximately 0.2% moisture content).
d—As conditioned to equilibrium with 50% relative humidity.
e—Test method in ASTM D4092.
f—Pseudo indicates that the thermosetting and thermoplastic components were mixed in the form of pellets or powder prior to fabrication.
g—Dow Plastics samples are unannealed.

Materials	Properties		ASTM test method	Polyphthalamide (PPA)					
				Unreinforced	Extra-tough	33% glass reinforced	45% glass reinforced	33% glass reinforced V-0	40% mineral reinforced
Processing	1a. Melt flow (mg./10 min.)		D1238						
	1. Melting temperature, °C. T_m (crystalline)		D-3418	310	310	310	310	310	310
	T_g (amorphous)								
	2. Processing temperature range, °F. (C = compression; T = transfer; I = injection; E = extrusion)			I: 610-660	I: 610-660	I: 610-660	I: 610-660	I: 610-660	I: 610-660
	3. Molding pressure range, 10^3 p.s.i.			5-15	5-15	5-15	5-15	5-15	5-15
	4. Compression ratio			2.5-3	2.5-3	2.5-3	2.5-3	2.5-3	2.5-3
	5. Mold (linear) shrinkage, in./in.		D955	0.015-0.020	0.015-0.020	0.002-0.006	0.002-0.003	0.002-0.004	0.008
Mechanical	6. Tensile strength at break, p.s.i.		D638[b]			32,000	38,000	26,000	17,000
	7. Elongation at break, %				13.0	5.0	5.2		
	8. Tensile yield strength, p.s.i.		D638[b]	15,100	10,800				
	9. Compressive strength (rupture or yield), p.s.i.		D695			40,000	45,500		26,000
	10. Flexural strength (rupture or yield), p.s.i.		D790	23,000	15,000	45,000	54,000	37,300	30,000
	11. Tensile modulus, 10^3 p.s.i.								
	12. Compressive modulus, 10^3 p.s.i.								
	13. Flexural modulus, 10^3 p.s.i.	73° F.	D790	475	300	1,750	2,250	1,900	1,300
		200° F.	D790			483	603		
		250° F.	D790			429	472		
		300° F.	D790						
	14. Izod impact, ft.-lb./in. of notch (⅛-in. thick specimen)		D256A	1.0	20	2.4	2.5	1.5	0.8
	15. Hardness	Rockwell	D785	125	120	125	125	125	125
		Shore/Barcol	D2240/ D2583						
Thermal	16. Coef. of linear thermal expansion, 10^{-5} in./in./°C.		D696		33.0	13	8		19
	17. Deflection temperature under flexural load, °F.	264 p.s.i.	D648	248	248	545	549	523	381
		66 p.s.i.	D648						
	18. Thermal conductivity, 10^{-4} cal.-cm./ sec.-cm.^{2}-°C.		C177	1.7		2.3	2.6		2.6
Physical	19. Specific gravity		D792	1.17	1.13	1.43	1.56	1.71	1.54
	20. Water absorption (⅛-in. thick specimen), %	24 hr.	D570	0.81	0.65	0.21	0.12	0.18	0.14
		Saturation	D570						
	21. Dielectric strength (⅛-in. thick specimen), short time, v./mil		D149			530	560	458	>560
			SUPPLIERS[a]	Amoco Performance Products	Amoco Performance Products	Amoco Performance Products	Amoco Performance Products	Amoco Performance Products	Amoco Performance Products

a—See the Buyers' Guide, p. 681, for additional suppliers of specialty materials and custom compounds.
b—Tensile test method varies with material: D638 is standard for thermoplastics; D651 for rigid thermosetting plastics; D412 for elastomeric plastics; D882 for thin plastics sheeting.
c—Dry, as molded (approximately 0.2% moisture content).
d—As conditioned to equilibrium with 50% relative humidity.
e—Test method in ASTM D4092.
f—*Pseudo* indicates that the thermosetting and thermoplastic components were mixed in the form of pellets or powder prior to fabrication.
g—Dow Plastics samples are unannealed.

Polypropylene

	Homopolymer								
	Unfilled	10-40% talc-filled	10-40% calcium carbonate-filled	10-30% glass fiber-reinforced	40% glass fiber-reinforced	20-30% long glass fiber-reinforced	40% long glass fiber-reinforced	30% random glass mat	40% random glass mat
1a.	0.4-38.0	0.1-30.0	0.1-30.0	1-20	1-20				
1.	160-175	158-168	168	168	168	168	163	168	168
	– 20								
2.	I: 375-550 E: 400-500	I: 350-550	I: 375-525	I: 425-475	I: 450-550	I: 360-440	I: 370-410	C: 420-440	C: 420-440
3.	10-20	10-20	8-20		10-25		8-12	1-2	1-2
4.	2.0-2.4						3-4		
5.	0.010-0.025	0.008-0.015	0.007-0.014	0.002-0.005	0.003-0.005	0.0025-0.004	0.001-0.003	0.002-0.003	0.001-0.002
6.	4500-6000	3540-5000	3400-4500	6500-13,000	8400-15,000	7500-10,100	10,500	12,000	14,000
7.	100-600	3-8	10-80	1.8-3.0	1.5-4	2.1-2.2	1.7	3	2.1
8.	4500-5400	3500-5000	3850-4600					12,000	14,000
9.	5500-8000	7500	3000-7200	6500-8400	8900-9800	6500-7200	10,400		9000
10.	6000-8000	7000-9200	5500-7000	7000-20,000	10,500-22,000	10,000-10,500	20,800	20,000	24,000
11.	165-225	450-575	375-500	700-1000	1100-1500	750-900	970	670	850
12.	150-300								
13.	170-250	210-625	230-450	310-780	950-1000	550-800	1000	620	800
	50	400	320						
	35								
14.	0.4-1.4	0.4-1.4	0.8-1.0	1.0-2.2	1.4-2.0	3.5-7.8	10.04	12.2	14
15.	R80-102	R85-110	R78-99	R100-115	R102-111	R105-117			
16.	81-100	42-80	28-50	21-62	27-32			15	15
17.	120-140	132-180	135-170	253-288	300-330	250-295	300	310	310
	225-250	210-290	200-270	290-320	330	305			
18.	2.8	7.8	6.9	5.5-6.2	8.4-8.8	2.35			
19.	0.900-0.910	0.97-1.27	0.97-1.25	0.97-1.14	1.22-1.23	1.04-1.17	1.21	1.1	1.19
20.	0.01-0.03	0.01-0.03	0.02-0.05	0.01-0.05	0.05-0.06	0.05			
			0.1		0.09-0.10				
21.	600	500	410-500		500-510				360
	Amoco Chemicals; Aristech Chem.; Bamberger Polymers; Eastman; Exxon; Ferro Corp.; Fina; Himont USA—Adv. Mat'l.; M.A. Polymers; Monmouth; Philips; Quantum, USI; Rexene; Schulman; Shell; Shuman; Solvay Polymers; Thermofil; Wash. Penn	Akzo; Bamberger Polymers; Eastman; Exxon; Ferro Corp.; Himont USA—Adv. Mat'l.; M.A. Polymers; MRC; Polifil; Polycom Huntsman; RTP; Rexene; Schulman; Thermofil; Wash. Penn	Akzo; Bamberger Polymers; Eastman; Ferro Corp.; Himont USA—Adv. Mat'l.; M.A. Polymers; Polifil; Polycom Huntsman; RTP; Rexene; Schulman; Thermofil; Wash. Penn	Akzo; Bamberger Polymers; Eastman; Ferro Corp.; Himont USA—Adv. Mat'l.; ICI Advanced Materials; M.A. Polymers; MRC; Polifil; RTP; Schulman	Adell; Akzo; Ferro Corp.; Himont USA—Adv. Mat'l.; ICI Advanced Materials; M.A. Polymers; MRC; Polifil; RTP; Schulman; Thermofil; Wash. Penn	Akzo; Hoechst Celanese; ICI Advanced Materials	Hoechst Celanese; ICI Advanced Materials	Azdel	Azdel

Materials	Properties		ASTM test method	Polyetherimide			Polyethylene and ethylene copolymers (see also Thermoplastic elastomers)			
							Low and medium density			
									LDPE copolymers	
				Unfilled	30% glass fiber-reinforced	EMI shielding (conductive); 30% carbon fiber	Branched homopolymer	Linear copolymer	Ethylene-vinyl acetate	Ethylene-ethyl acrylate
Processing	1a.	Melt flow (gm./10 min.)	D1238							
	1.	Melting temperature, °C. T_m (crystalline)					98-115	122-124	103-108	
		T_g (amorphous)		215-217	215	215	−25			
	2.	Processing temperature range, °F. (C = compression; T = transfer; I = injection; E = extrusion)		I: 640-800	I: 620-800	I: 600-780	I: 300-450 E: 250-450	I: 350-500 E: 450-600	C: 200-300 I: 350-430 E: 300-380	C: 200-300 I: 250-500
	3.	Molding pressure range, 10^3 p.s.i.		10-20	10-20	10-30	5-15	5-15	1-20	1-20
	4.	Compression ratio		1.5-3	1.5-3	1.5-3	1.8-3.6	3		
	5.	Mold (linear) shrinkage, in./in.	D955	0.005-0.007	0.001-0.002	0.0005-0.002	0.015-0.050	0.020-0.022	0.007-0.035	0.015-0.035
Mechanical	6.	Tensile strength at break, p.s.i.	D638[b]	14,000	25,000-28,500	29,000-34,000	1200-4550	1900-4000	2200-4000	1600-2100
	7.	Elongation at break, %	D638[b]	60	2-5	1-3	100-650	100-965	300-750	700-750
	8.	Tensile yield strength, p.s.i.	D638[b]	15,200	24,500		1300-2100	1400-2800	1200-6000	
	9.	Compressive strength (rupture or yield), p.s.i.	D695	20,300	23,500-24,000	32,000				3000-3600
	10.	Flexural strength (rupture or yield), p.s.i.	D790	22,000	33,000	37,000-45,000				
	11.	Tensile modulus, 10^3 p.s.i.	D638[b]	430	1300-1600	2600-3300	25-41	38-75	7-29	4-7.5
	12.	Compressive modulus, 10^3 p.s.i.	D695	420	550					
	13.	Flexural modulus, 10^3 p.s.i. 73° F.	D790	480	1200-1300	2500-2600	35-48	40-105	7.7	
		200° F.	D790	370	1100					
		250° F.	D790	360	1060					
		300° F.	D790	350	1040					
	14.	Izod impact, ft.-lb./in. of notch (⅛-in. thick specimen)	D256A	1.0-1.2	1.7-2.0	1.2-1.6	No break	1.0-No break	No break	No break
	15.	Hardness Rockwell	D785	M109-110	M125, R123	M127				
		Shore/Barcol	D2240/ D2583				Shore D44-50	Shore D55-56	Shore D17-45	Shore D27-38
Thermal	16.	Coef. of linear thermal expansion, 10^{-6} in./in./°C.	D696	47-56	20-21		100-220		160-200	160-250
	17.	Deflection temperature under flexural load, °F. 264 p.s.i.	D648	387-392	408-420	405-420				
		66 p.s.i.	D648	405-410	412-415	410-425	104-112			
	18.	Thermal conductivity, 10^{-4} cal.-cm./sec.-cm.^{2}-°C.	C177	1.6	6.0-9.3	17.6	8			
Physical	19.	Specific gravity	D792	1.27	1.49-1.51	1.39-1.42	0.917-0.932	0.918-0.940	0.922-0.943	0.93
	20.	Water absorption (⅛-in. thick specimen), % 24 hr.	D570	0.25	0.18-0.20	0.18-0.2	<0.01		0.005-0.13	0.04
		Saturation	D570	1.25	0.9					
	21.	Dielectric strength (⅛-in. thick specimen), short time, v./mil	D149	480	495-630		450-1000		620-760	450-550
		SUPPLIERS[a]		GE Plastics	Akzo; Ferro Eng. Therm.; GE Plastics; ICI Advanced Materials; RTP; Thermofil	Akzo; Ferro Eng. Therm.; ICI Advanced Materials; RTP; Thermofil	Bamberger Polymers; Chevron; Dow Plastics; Du Pont; Eastman; Exxon; Monmouth; Novacor; Quantum, USI; Rexene; Union Carbide; Wash. Penn	Bamberger Polymers; Dow Plastics; Du Pont; Canada; Exxon; Monmouth; Novacor; Quantum, USI; Solvay Polymers; Union Carbide	Chevron; Du Pont; Eastman; Exxon; Quantum, USI; Rexene; Union Carbide	Union Carbide

a—See the Buyers' Guide, p. 681, for additional suppliers of specialty materials and custom compounds.
b—Tensile test method varies with material: D638 is standard for thermoplastics; D651 for rigid thermosetting plastics; D412 for elastomeric plastics; D882 for thin plastics sheeting.
c—Dry, as molded (approximately 0.2% moisture content).
d—As conditioned to equilibrium with 50% relative humidity.
e—Test method in ASTM D4092.
f—*Pseudo* indicates that the thermosetting and thermoplastic components were mixed in the form of pellets or powder prior to fabrication.
g—Dow Plastics samples are unannealed.

Polyethylene and ethylene copolymers (Cont'd)

	Low and medium density (Cont'd)	High density							Crosslinked
	LDPE copolymers (Cont'd)			Copolymers					
	Ethylene-methyl acrylate	Polyethylene homopolymer	Rubber-modified	Low and medium molecular weight	High molecular weight	Ultra high molecular weight	30% glass fiber-reinforced	20-30% long glass fiber-reinforced	Molding grade	Wire and cable grade
1a.		5-18								
1.	83	130-137	122-127	125-132	125-135	125-138	120-140	120-140		
2.	E: 200-620	I: 350-500 E: 350-525	E: 360-450	I: 375-500 E: 300-500	I: 375-500 E: 375-475	C: 400-500	I: 350-600	I: 525-600	C: 240-450 I: 250-300	E: 250-300
3.		12-15		5-20		1-2	10-20			
4.		2		2						
5.		0.015-0.040		0.012-0.040	0.015-0.040	0.040	0.002-0.006	0.002-0.004	0.007-0.090	0.020-0.050
6.	1650	3200-4500	2300-2900	3000-6500	2500-4300	5600-7000	7500-9000	7000-8500	1600-4600	1500-3100
7.	740	10-1200	600-700	10-1300	170-800	420-525	1.5-2.5	2.0-2.5	10-440	180-600
8.	1650	3800-4800	1400-2600	2600-4200	2800-3900	3100-4000				
9.		2700-3600		2700-3600			6000-7000	5000-6000	2000-5500	
10.							11,000-12,000	8000-9500	2000-6500	
11.	12	155-158		90-130	136		700-900	800-900	50-500	
12.									50-150	
13.		145-225		120-180	125-175	130-140	700-800	600-800	70-350	8-14
14.		0.4-4.0		0.35-6.0	3.2-4.5	No break	1.1-1.5	2.5-3.5	1-20	
15.						R50	R75-90	R75-90		
		Shore D56-73	Shore D55-60	Shore D58-70	Shore D63-65				Shore D55-80	Shore D33-57
16.		59-110		70-110	70-110	130-200	48		100	100
17.						110-120	250	240-250	105-145	100-173
		175-196		149-176	154-158	155-180	260-265	250-260	130-225	
18.		11-12		10			8.6-11			
19.	0.942-0.945	0.952-0.965	0.932-0.939	0.939-0.960	0.974-0.955	0.94	1.18-1.28	1.09-1.18	0.95-1.45	0.91-1.40
20.	0.0	<0.01		<0.01		<0.01	0.02-0.06	0.05-0.06	0.01-0.06	0.01-0.06
21.		450-500		450-500		710	500-550		230-550	620-760
	Chevron; Exxon	Allied; Bamberger Polymers; Chevron; Dow Plastics; Du Pont; Exxon; Hoechst Celanese; M.A. Polymers; Monmouth; Philips; Quantum, USI; Schulman; Shuman; Solvay Polymers; Union Carbide	Allied; M.A. Polymers	Allied; Bamberger Polymers; Chevron; Dow Plastics; Du Pont; Exxon; Hoechst Celanese; Monmouth; Novacor; Philips; Quantum, USI; Schulman; Solvay Polymers; Union Carbide	Allied; Amoco Chemicals; Chevron; Dow Plastics; Du Pont; Exxon; Hoechst Celanese; Novacor; Philips; Quantum, USI; Solvay Polymers	Himont USA; Hoechst Celanese	Akzo; Ferro Corp.; Ferro Eng. Therm.; ICI Advanced Materials; M.A. Polymers; Schulman; Thermofil	Akzo	Monmouth; Philips; Quantum, USI	Quantum, USI; Union Carbide

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DECLARATION OF JOHN COX

I, John Cox of Newton Abbot, Devon, United Kingdom, state that:

1. I am a named inventor in U. K. patent GB 2,248,177, and coinvented the flexible cutting mat described in that patent.

2. I was formerly a director of ROS Marketing, also of Newton Abbot, Devon, United Kingdom.

3. In 1990, I participated in an effort by ROS Marketing to sell in the U. K. a flexible plastic sheet cutting mat for use in food preparation.

4. Prior to December 22, 1991 and as part of its sales efforts, ROS Marketing distributed to the public printed brochures, true copies attached hereto as Exhibits 1 and 2.

5. During the course of 1991 and prior to December 22, 1991, a description of that cutting mat was described in various publicly distributed newspapers and magazines, and copies of clippings from those publications containing the ROS mat was described in various publicly distributed newspapers and magazines and copies of clippings from those publications containing the ROS mat product descriptions are attached hereto as Exhibits 3, 4, 5, and 6.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Date: 8/8/97

J. A. C

John Cox

Dear Customer, Thank you for choosing RoSMat food preparation and chopping mats! We hope that you will find they help you to prepare your family's food safely and more efficiently.

As a small gesture of our appreciation we would like to make you a SPECIAL OFFER. If you would like to order more sets of RoSMat food preparation and chopping mats for family or friends we will include one of our new Sugar Paste Mats worth £2.50 **FREE** with every set you order.

If you are like me you probably dislike seeing a price on a mail order advertisement only to find when you complete your order that there are extra charges for post, packing and even VAT! At RoSMat Marketing the price you see is the price you pay. There are NO HIDDEN EXTRA CHARGES!

Yours sincerely

K Gaskin

Richard Gaskin

*P.S. *Special tip*

You may find that on some very smooth surfaces you would like to prevent your RoSMat from moving, all you need to do is wet the bottom of the RoSMat or the surface with water, or place it on a wet cloth.

Order by Phone Access/VISA/MasterCard/Eurocard/Switch/Connect card holders may Telephone orders direct on (0548) 830710 between 08:30 and 17:00 hours Mon to Fri

RoSMat Marketing Limited, Sealarm House, Back Street, Modbury, Devon PL21 0XX • *Trade enquiries welcome*

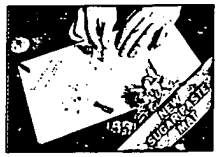
ORDER FORM

Return your order to:
RoSMat Marketing Limited, Sealarm House, Back Street, Modbury, Devon PL21 0XX

YOUR ORDER • ALL OUR PRICES ARE INCLUSIVE OF VAT, PACKING & POSTAGE
ROSMATS ARE ALL DESPATCHED BY RECORDED DELIVERY FOR YOUR PROTECTION

Six colour coded food preparation and chopping mats WITH FREE Sugar Paste Mat

New Pastry & Dough Mat 406 x 509mm (approx. 16 x 20") Plus one Sugar Paste Mat



New Set of Three Sugar Paste Mats 183 x 325mm (approx. 7¼ x 12¾")

PRICE EACH SET	QUANTITY	TOTAL VALUE
£18		
£10.50		
£9.50		
TOTAL ORDER VALUE		

I enclose my cheque payable to RoSMat Marketing Ltd or Please debit my card: Access/VISA/Master Card/Eurocard/Switch/Connect

account number

expiry date

Signature: _____

Delivery Address if different from that on the left

Name _____
Address _____
_____
_____
_____
Post code

Name _____
Address _____
_____
_____
_____
Post code

If you are not completely satisfied with your RoSMats please return them, unused, within 14 days for a full refund.

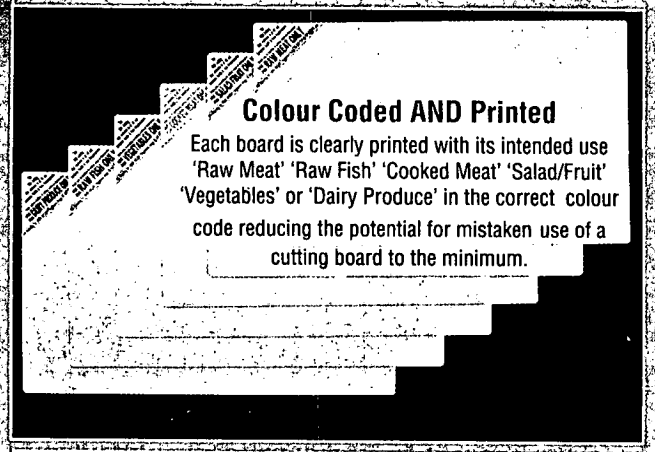
Radio Times
16-22 March 19

EXHIBIT 3
Blumberg No 5117

NEW

ROS Flexible Cutting Mats*

Designed for professional caterers ROS Flexible Cutting and Chopping Mats ensure hygienic food preparation and the prevention of bacterial cross-contamination.

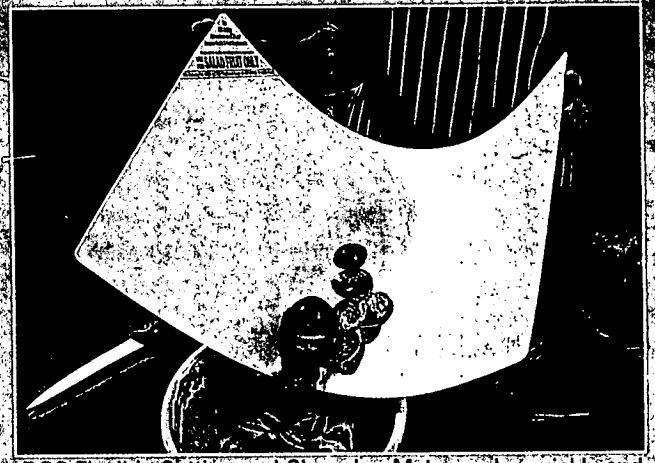


Colour Coded AND Printed

Each board is clearly printed with its intended use 'Raw Meat' 'Raw Fish' 'Cooked Meat' 'Salad/Fruit' 'Vegetables' or 'Dairy Produce' in the correct colour code reducing the potential for mistaken use of a cutting board to the minimum.

Double Sided and a full 12 x 21 inches (325 mm x 550 mm) they are available individually: 'Raw Meat' 'Raw Fish' 'Cooked Meat' 'Salad and Fruit' 'Vegetable' or 'Dairy Products' or in a set of six.

These Tough, Hygienic, Flexible and Very Useful cutting mats are ideal for restaurants, hospitals, hotels, industrial and institutional catering departments. They conform to all European regulations concerning health, safety and hygiene in the preparation of cooked and uncooked food being made from a special grade of flexible polypropylene, a resilient, long lasting and clean material which ensures the minimum blunting of knives when cutting or chopping and being flexible, enables the chef to use the mat to 'funnel' the chopped produce straight into a container or saucepan.



ROS Flexible Cutting and Chopping Mats can be quickly and easily cleaned or sterilised in boiling water or dishwashing machine.

Double Sided and keenly priced!

ROS Colour Coded Cutting Mats are so economically priced that when they eventually become unacceptably scored and soiled they can be replaced very cheaply.

Wholesale Prices

which the product was sold, the total promotional budget for trade shows and advertising of New Age and Far West was as follows:

YEAR	NEW AGE	FAR WEST	TOTAL PROMOTION
1993	$8,286	-	$8,286
1994	$7,374	-	$7,374
1995	$3,815	$3,000	$6,815
1996	$21,326	$3,000	$24,326
1997	$69,913	$3,000	$72,913

11. New Age first offered the product at an average price of $1.75 per mat in 1993. The price currently averages $1.50 because New Age has felt pressure to reduce its prices as a result of competition from infringers and licensees. Nevertheless, New Age's highest and lowest average prices over the years 1993-1997 have never differed by more than $0.25. Mr. Thompson's declaration indicates that Far West first offered the mat at an average price of $0.95, that Far West currently offers the product at an average price of $0.90, and that Far West's highest and lowest average prices over the years 1995-1997 have never differed by more than $0.05. Thus, in spite of relatively low promotional expenditures and relatively constant prices, this product has enjoyed considerable and increasing commercial success.

I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the above-referenced application or any patent issuing thereon.

Date: 1-14-98

MARVIN MICK

[DECANEWA98.A14]

DECLARATION UNDER 37 C.F.R. § 1.132

I, James F. Carley, declare and say that:

1. I am a Chemical Engineer with over 40 years of experience in Chemical, Materials, Plastics and Quality-Assurance Engineering. I hold Doctor of Philosophy, Master's and Bachelor's degrees, all in Chemical Engineering, from Cornell University. I am a registered Professional Engineer in California and Colorado. In 1983 I was elected a fellow of the international Society of Plastics Engineers.

2. I taught at the university level for 15 years and conducted academic research in the fields of Chemical Engineering, Polymer Science and Mechanical Engineering. I have written 12 papers included in national conference proceedings and conducted 30 presentations at technical conferences. I have authored eight chapters in technical books, and am the editor/author of *Plastics Extrusion Technology Handbook* (2nd ed. 1989) and *Whittington's Dictionary of Plastics* (3d ed. 1993). I have authored or co-authored over 50 publications in trade journals and refereed journals, the majority of which dealt with plastics matters. I was Engineering Editor of *Modern Plastics* for three years and part-time Technical Editor for six years. As Technical Editor, I wrote 90 technical reviews for *Modern Plastics*.

3. My industrial experience in the field of plastics includes five years of research and development experience with DuPont Company's Plastics Department, two years with Prodex Corp., a manufacturer of plastics extrusion equipment, and one year with Celanese Development Corp. My work involved plastics processing, statistical consulting, new product development, machine design and setup and economic evaluation of new products. I have also served as an independent research scientist and consultant. In the area of plastics engineering I have been consulted on applications of plastics materials to product design, material selection, processing, rheology, equipment design, quality control, and design and analysis of experiments.

4. As a result of my education and experience, I consider myself an expert in the chemical composition, the physical and application properties of plastics and the

applications of plastics in product design. With regard to applications of plastics, I am familiar with the suitability of many types of plastics for use in various types of products.

5. I have read U.S. Patent No. 5,472,790 ("the '790 patent") and understand the subject matter it discloses and the invention it claims. New Age Products, Inc., the assignee of the '790 patent, currently employs me as an expert in the patent infringement case that is currently pending against Progressive International Corporation. I receive hourly fees for my services, which include services in connection with related proceedings in the U.S. Patent and Trademark Office.

6. The art to which the invention pertains relates primarily to plastics engineering and the suitability of plastics for use in articles, and also to plastic kitchenware products such as cutting boards.

7. I am familiar with the level of ordinary skill in the art. The level of ordinary skill in the art is not high. The art is not polymer science, and the hypothetical "person of ordinary skill in the art" would not be a polymer scientist or plastics engineer. Rather, the person of ordinary skill in the art may not even have formal training in plastics engineering or a thorough understanding of the technical details of the material properties such as flexural modulus and Rockwell hardness. For example, designing a conventional plastic cutting board is fairly trivial, since such cutting boards are essentially nothing more than rectangular slabs of tough rigid plastic. Any major resin supplier would be able to assist a person designing such a cutting board with the minimal design details that are involved, such as selecting a plastic approved for contact with food. Therefore, designers of such articles need not themselves have a detailed knowledge of the material properties of plastics. The design of such products is hardly confined to large companies with highly skilled research and development staff. Often, such products are conceived by entrepreneurs with little more than a good idea for a product and little more than a layman's knowledge of plastics.

1995	at least 200,000	$0.95	$190,000
1996	at least 200,000	$0.95	$190,000
1997	at least 400,000	$0.90	$360,000

Although the average price was lowered slightly in 1997 in response to competition by an infringer of the patent, the slight $0.05 change in price could not have caused the doubling of sales. Rather, I believe sales doubled between 1996 and 1997 because customers perceived the merits of the invention as defined in the patent.

4. Far West has not promoted the product to any significant extent. Far West exhibits at one trade show each year, at a cost of about $3,000. Other than the trade show, Far West spends no money or effort on advertising or any other type of promotion.

5. In spite of relatively low promotional expenditures and a relatively constant price, this product has enjoyed considerable and increasing commercial success.

I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the above-referenced application or any patent issuing thereon.

Date: 1-10-98

RODERICK THOMPSON

I, Roderick Thompson, declare and say that:

1. I am the President of Far West Manufacturing, Inc., a California corporation having offices in San Diego, California ("Far West"). Far West is a licensee of U.S. Patent No. 5,472,790 ("the patent"). I am also the inventor named in the patent.

2. Far West's only product is the flexible cutting mat, which it has manufactured and sold since 1995. To the best of my information and belief, this product is within the scope of the claims of the patent in that it is identical to the 11½ inch by 15 inch flexible cutting mat produced by New Age Products, Inc. in all material respects mentioned in the patent with the exception of its color. On that basis, to the best of my information and belief, the product has the following characteristics as described in the patent: It is a plastic sheet made from flat stock material (i.e., having been extruded flat and never having been stored in the form of a roll) between 0.008 and 0.030 inches in thickness, between R72 and R90 in Rockwell hardness, between 75,000 psi and 200,000 psi in flexural modulus, and able to support an article weighing at least five ounces at a distance of at least ten inches from the end at which the mat is held when the mat is flexed into the funnel or trough shape illustrated in Fig. 1 of the patent. This is the flexible cutting mat product to which I refer below.

3. The flexible cutting mat that Far West sells has met with considerable commercial success, and sales continue to grow. The product is sold in units of one cutting mat per package to distributors and retailers. Far West's sales figures for this product, including number of mats sold and their average price, are as follows:

YEAR	UNITS SOLD	AVG. PRICE	TOTAL SALES

I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the above-referenced application or any patent issuing thereon.

Date: 16 Jan 1998

J F Carley

JAMES F. CARLEY, Ph.D.

FROM : NEW AGE PRODUCTS INC. PHONE NO. : 7609676415

I, Michael Cahhal, declare and say that:

1. I am a professional chef with 33 years of experience in the culinary arts. I hold an Associate of Arts degree in Culinary Arts, and graduated with honors. I am currently self employed as a chef consultant of my own company, MLC Enterprises, and have been since 1992. I have been associated with over 70 kitchens in the past 33 years. I began my culinary career with a tenure with the Hyatt Regency hotel chain where I served as chef and manager of kitchen operations for the Hyatt Dallas Hotel, Ponte d' Ore Hyatt Regency Embarcadero in San Francisco, as well as Hyatt Regency hotels in Dearborn, Michigan, Chicago, Lake Tahoe, New Orleans and Nashville. In 1978 I moved to open the Loews Anatole Hotel in Dallas. The Loews Anatole's five star L'Entrecote and the four and a half star Plum Blossom restaurants received worldwide acclaim. I left Loews Anatole in 1980 to become the Sheraton Corporate Executive Chef. I headed operations at the Sheraton Washington Hotel and developed a new style of regional American cuisine for the entire Sheraton hotel chain. When the opportunity to serve as a consultant for Memphis restaurants arose in 1982, I left the hotel industry. I created the restaurants on Mud Island Historic River Park, created Memphis's first northern Italian restaurant, Rialto's Palm Court, which was acclaimed seven straight years as one of Memphis' top three restaurants, and opened the city's first wine bar, Le Chardonnay, as well as La Reserve, a private French dining club, and Bayou Bar and Grill, a Cajun grill. In 1990 I opened the prototype for a chain of Louisiana-style eateries, Café Roux, and continued to operate three Café Roux for ~~three~~ SEVEN mlc years. In ~~1990~~ 1997 mlc I opened a seasonal classic French restaurant in Bar Harbor, Maine.

2. I have been awarded three culinary medals. I have held the office of Baili for the Memphis chapter of the Chaine des Rotisseurs, the most

mlc

prestigious culinary association in the world, for eight years and am presently Baili Honorare I have also served as president of the Greater Memphis Chef's Association and am a member of the American Institute of Food and Wine.

3. Between 1992 and 1997 I produced and aired several television and radio shows, including a 30 minute cooking show, "Now You're Cookin," which aired on Memphis' ABC affiliate, a radio talk show called "What's Cooking," which ran 4½ years, and a noon news quick tip show for Memphis' CBS affiliate, which ran for a year. I continue to make numerous personal appearances each year for charitable and profit organizations throughout the mid South.

4. It was during a personal appearance at a Bartlett, Tennessee supermarket that I first became aware of the flexible plastic cutting mat that New Age Products, Inc. of San Diego, California sells under the name "Chop Chop." I was in need of a cutting board for a demonstration, and the store manager offered me one of New Age's cutting mats that he was selling from the display. The Chop Chop mat was perfect for my needs. I continued to use the Chop Chop mat after this event, including on my television shows.

5. Soon after I began using the Chop Chop mat on television, a representative for New Age Products called and asked for my opinions on the Chop Chop. I raved about its innovative concept of doubling as a cutting mat on which a person can prepare food and a scoop with which the person can then transfer the food into a pot. I continue to rave about the Chop Chop mat to nearly everyone I meet. Although I admittedly now receive a commission from New Age on any sales that may result, I was enthusiastic about the Chop Chop mat from that first day I used it in that Bartlett, Tennessee supermarket—way before any commission arrangement was even brought up. In any event, I receive the same sales commission rate as any other New Age sales representative receives. A commission is not the reason for my enthusiasm about the Chop Chop. It's simply a great product. I personally use at least three Chop Chop mats at home. I wholeheartedly offered my help when New Age told

mk

me a couple of weeks ago that they could use my comments to help bolster their patent in some proceedings in the U.S. Patent and Trademark Office. I do not expect anything in return.

6. I have used hundreds of cutting boards or mats in my professional career as well as hundreds of other culinary tools and gadgets. (I use the terms cutting "board" and "mat" synonymously here.) A conventional plastic cutting mat is a thick slab of plastic (at least about ¼ inch in thickness). They are quite rigid and inflexible. I have seen and used literally hundreds of different cutting mats in my career, and all of the mats shared the same property of being thick and inflexible. The Chop Chop mat is like nothing I have ever seen. New Age has informed me that theirs is admittedly not the first thin, flexible cutting mat ever conceived, but added that they believe no other mat before the Chop Chop had the Chop Chop's unique balance of flexibility with strength and toughness in combination with its ability to lay flat on a countertop without a tendency to curl, its resistance to discoloration when bent into the trough shape, its resistance to flaking when scraped, and other advantages. I comment below on each of these problems that I have been told afflicted prior mats and explain that overcoming these problems would clearly be the overwhelming reason why chefs and home cooks alike may be purchasing the Chop Chop in increasing numbers, and not any minor decreases in price or increases in advertising that may have occurred.

7. The Chop Chop mat is strong enough to support several pounds of food when held at one end and flexed into its characteristic curved or trough shape. I have been told that strength is an issue in this case, and I do not believe that professional chefs or domestic users of cutting mats would be interested in a mat that was flimsy and could not support more than a couple of ounces. It would certainly be frustrating if the mat crumpled under the weight of the food and allowed it to spill.

8. Also, I have been told that toughness is an issue. Chefs and domestic users of cutting mats would not tolerate a cutting mat that is so soft or so thin that using a knife on it would cut completely through it or even deeply into it. Not only would that shorten the life of the mat, but it's well known that a deeply scored mat can harbor bacteria. Professional kitchens replace cutting mats frequently for this reason. On the other hand, a mat made of a material that is too hard could rapidly dull a knife.

9. I have also been told that curling is a possibility unless the mat is made from the right material. Chefs and domestic users of cutting mats would reject a cutting mat that has a curl. From my experience with wooden cutting boards that have warped over time, I can say that a cutting mat that fails to stay flat on the countertop would be extremely irritating because it would move around on the countertop when one chops food on it. This could, of course, pose a danger to one's fingers.

10. I have also been told that mats made from softer plastic could allow plastic to flake off if, for example, scraped with one's fingernail. Chefs and domestic cutting mat users would not be interested in any cutting mat that allowed this to occur, since flakes of plastic could end up in the food being served.

11. I have also been told that mats made from certain plastics could be permanently discolored when flexed in that a whitish line could occur where the mat is flexed the most. Though I do not recall any specific instance, I know that I have seen this sort of discoloration in plastics from bending them. Such discoloration would be undesirable in a cutting mat because it could appear to be dirty or damaged. Also, a nice feature of the New Age mat is that it is sufficiently transparent or translucent that it can be placed over a recipe or something else it is desired to keep in view. Discoloration would affect this feature. All other

cutting mats I have seen have been opaque or at least too cloudy to read anything placed under them.

12. As a result of my experience, I consider myself familiar with what motivates professional chefs and home cooks to purchase culinary products such as cutting mats. Professional chefs and other cutting mat users would not purchase a cutting mat that has the problems mentioned above. I am not familiar with any other flexible cutting mats, but if the New Age mat in fact solves these problems that New Age has told me afflicted other mats, then chefs and other users would definitely purchase the New Age mat over those other mats for that reason alone, even if the New Age mat were to cost somewhat more. The problems mentioned above are not tolerable to prospective consumers in a cutting mat at any price.

13 Also, like price, advertising only goes so far toward increasing sales of culinary products, particularly in a professional kitchen setting. Even the slickest and most extensive advertising of a culinary product is rarely persuasive to professional chefs, who rely primarily on their own experience with a product and its reputation with other chefs. Although home cooks may perhaps be more tempted by advertising than professional chefs, the Chop Chop is the type of culinary product that one would replace often, and nobody would be a repeat purchaser of a cutting mat that suffered from the disadvantages described above. Advertising may help a company make a culinary product known initially, but it cannot create repeat customers. Only the merits of a great culinary product will keep customers coming back for more.

14. In view of the above, in my opinion, slight decreases in price or increases in advertising or similar occurrences would not be the motivating factor accounting for any increase in sales of the Chop Chop mat. Rather, the

advantages described above would be the overwhelming factor accounting for any increase in sales.

I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the above-referenced application or any patent issuing thereon.

Date: 1/21/97

Michael Cahhal

MICHAEL CAHHAL

Neil F. Martin, Esq., CSB No. [illegible],677
Kathleen A. Pasulka, Esq., CSB No. 145,255
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Attorneys for Plaintiff, New Age Products, Inc.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

NEW AGE PRODUCTS, INC.,

Plaintiff,

v.

PROGRESSIVE INTERNATIONAL CORP.,

Defendant.

PROGRESSIVE INTERNATIONAL CORP.,

Counterclaimant,

v.

NEW AGE PRODUCTS, INC.,

Counterclaim Defendant.

Civil Action No.: 96 2129 J CGA

DECLARATION OF RODERICK THOMPSON IN SUPPORT OF NEW AGE'S MOTION FOR PATENT CLAIM INTERPRETATION

DATE : SEPTEMBER 17, 1997

TIME : 2:30 P.M.

PLACE: COURTROOM 12

JUDGE:
HON. NAPOLEON A. JONES, JR

I, RODERICK THOMPSON, declare:

1. I am the inventor named in U.S. Patent No. 5,472,790 ("the '790 patent").

2. I regard and always have regarded my invention to be a flexible mat of a size for cutting and handling food articles that is made from a certain type of plastic. The use of such plastic solves the problems that existed in prior flexible cutting mats.

I did not invent the plastic material itself, nor was I the first to come up with the general idea of a flexible cutting mat. Rather, my discovery was that if I used a certain type of plastic for a flexible cutting mat, that it solved the problems that existed in the prior mat of which I was aware.

3. I never attempted to obtain patent protection so broad as to cover any and all sheets of this type of plastic, nor did I believe that I was entitled to such protection. Although I am experienced in the plastics field, I am not a polymer chemist, and it would be absurd for anyone to think that I invented a new kind of plastic. I never told my attorneys or the Patent and Trademark Office that I invented the plastic itself, and the '790 patent does not imply any such thing. In fact, the '790 patent clearly points out in column 4, lines 2-5 that a type of polypropylene having suitable physical properties was commercially available from Rexene Resins. I do not know how anyone could interpret the claims of the '790 patent as being so broad as to cover a mere sheet of plastic that is not a flexible article cutting and handling mat.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct; executed this 15 day of August, 1997 at Solana Beach, CA.

R. K. Thompson

RODERICK THOMPSON

Test Report

OCM TEST LABORATORY

3883 E. Eagle Drive, Anaheim, CA 92807-1722 / Phone 714-630-3003 • Fax 714-630-4443
FAA Repairstation Number OYCR172L

Date: **October 31, 1997**
OCMTL No: **971501**
PO No: **Verbal John R. Benefiel**
Phone: **248-644-1455**
Fax: **248-644-6530**

John R. Benefiel
Law Offices
280 Daines Street Suite 100 B
Birmingham, MI 48009-6244

Background:

A group of plastic sheeting samples identified as "COUNTER-MAID®" were submitted for the purpose of performing a material identification by use of Fourier Transform Infrared (FTIR) analysis and Differential Scanning Calorimetry (DSC).

The submitted samples were identified as a Polypropylene Copolymer. The purpose of this set of tests is to determine if this is indeed what the material is.

Methods of Testing:

FTIR testing was performed by removing a small amount of material from both sides of the sample and performing diffuse reflectance spectroscopy.

DSC testing was performed by cutting a sample weighing 7.20 mg, placing it in a sealed aluminum pan and performing a DSC test at a heating rate of 10°C per minute.

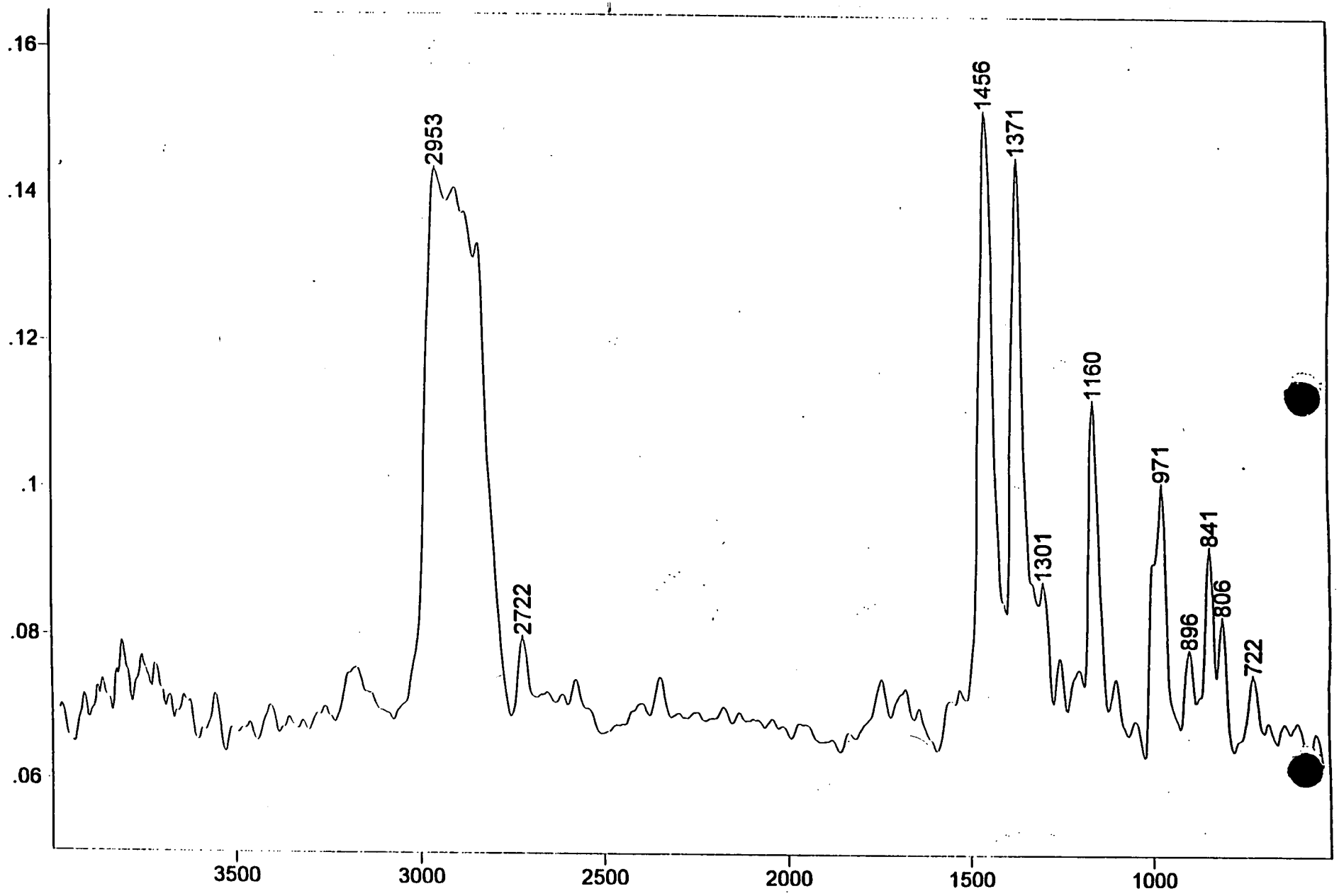
Test Results:

The FTIR analysis of the sample best matched that of Polypropylene Copolymer. See attached spectra's. The primary difference between the copolymer and homopolymer is the peak at 723 cm-1, this is indicative of a secondary material being present.

The DSC analysis of the COUNTER-MAID® sample shows a slight inflection in the slope at about 120°C. This is indicative of a copolymer. See attached DSC curves. You will notice the homopolymer standard shows a fairly flat slope prior to the transition of the polypropylene, where the copolymer standard shows an inflection.

Submitted by,

Bruce K. Sauer
Lab Director



sorbance / Wavenumber (cm-1)

2 : 971501A

IN R. BENEFIEL / POLYPROPYLENE COPOLYMER SHEETING

Paged X-Zoom CURSOR

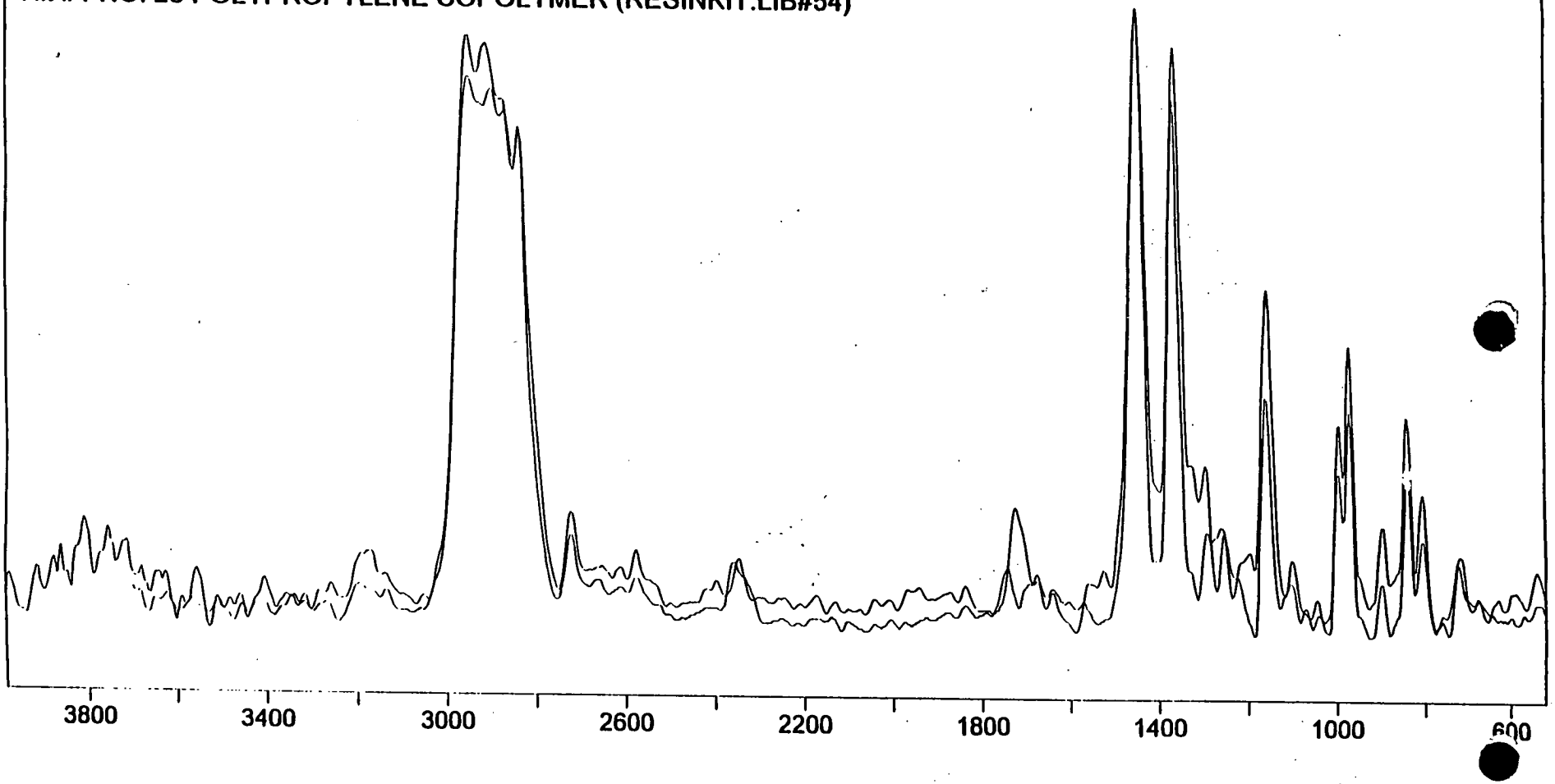
10/29/97 1:46 PM Res=8 cm-1

Search Date = 10/29/97 3:54 PM
Mask Used = None

Peak Search: None
Full Spectrum Search: Euclidian Distance
Custom Search: None

I:\data\97\971501a.SPC

Hit #1 NO. 26 POLYPROPYLENE COPOLYMER (RESINKIT.LIB#54)



Wavenumber (cm-1)

Hit List

Number	Quality Inde	SPC Identification
1	.2043	NO. 26 POLYPROPYLENE COPOLYMER
2	.27934	POLYPRO F-975 D*MODIFIED POLYPROPYLENE
3	.28898	PICCOLYTE S-25*POLYTERPENE RESIN
4	.31275	PT48.13401 TPXETHYLPENT-1-ENE)0
5	.34608	PT50.13601 P.P. NOVOLEN 1100M
6	.36465	EASTOBOND M-5L*HOT MELT LAMINATING ADHESIVE
7	.39505	PICCOLYTE S-125*HYDROCARBON THERMOPLASTIC TERPENE RESIN
8	.39505	PICCOLYTE S-125*HYDROCARBON THERMOPLASTIC TERPENE RESIN

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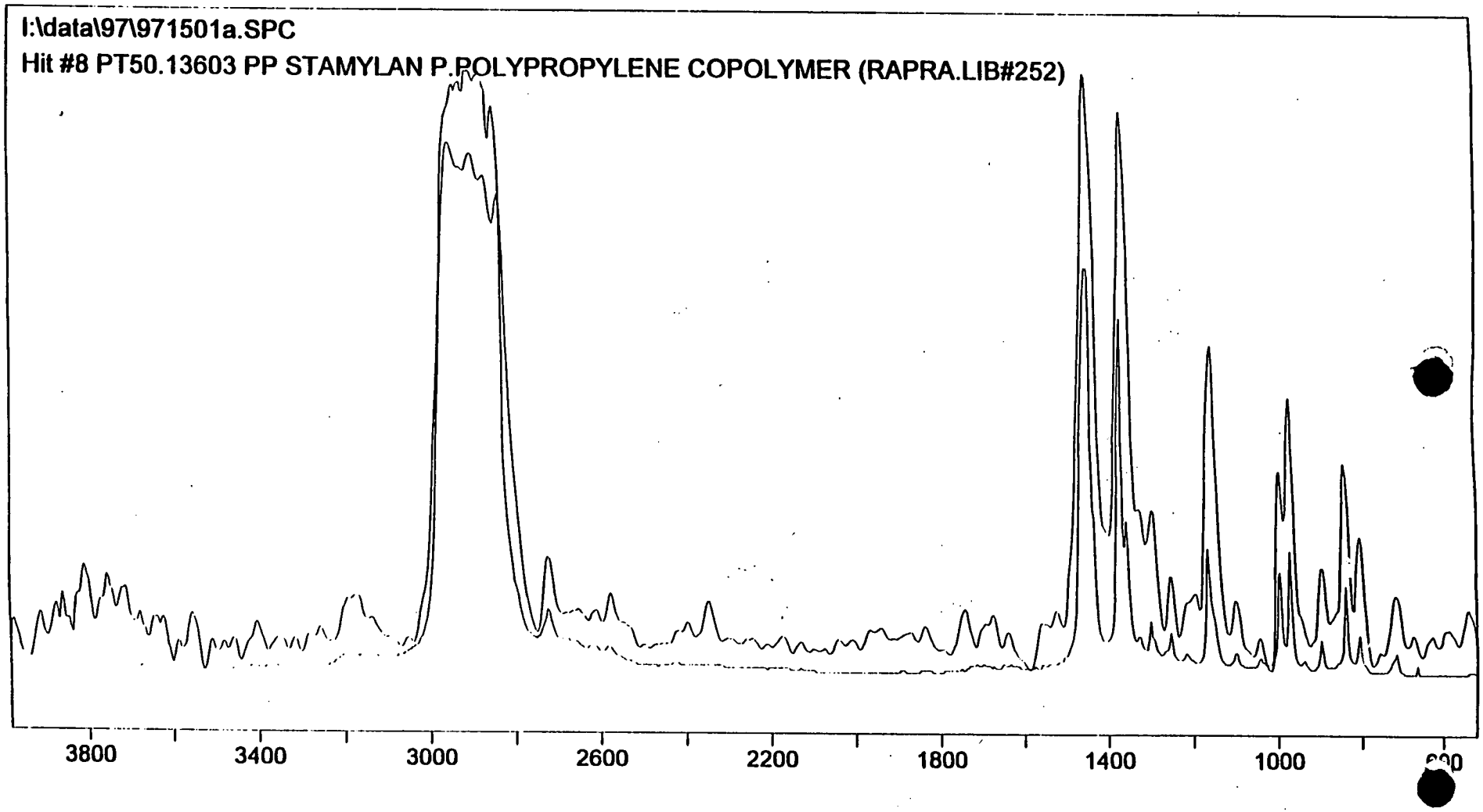
Mask Used = None

Peak Search: None
Full Spectrum Search: Euclidian Distance
Custom Search: None

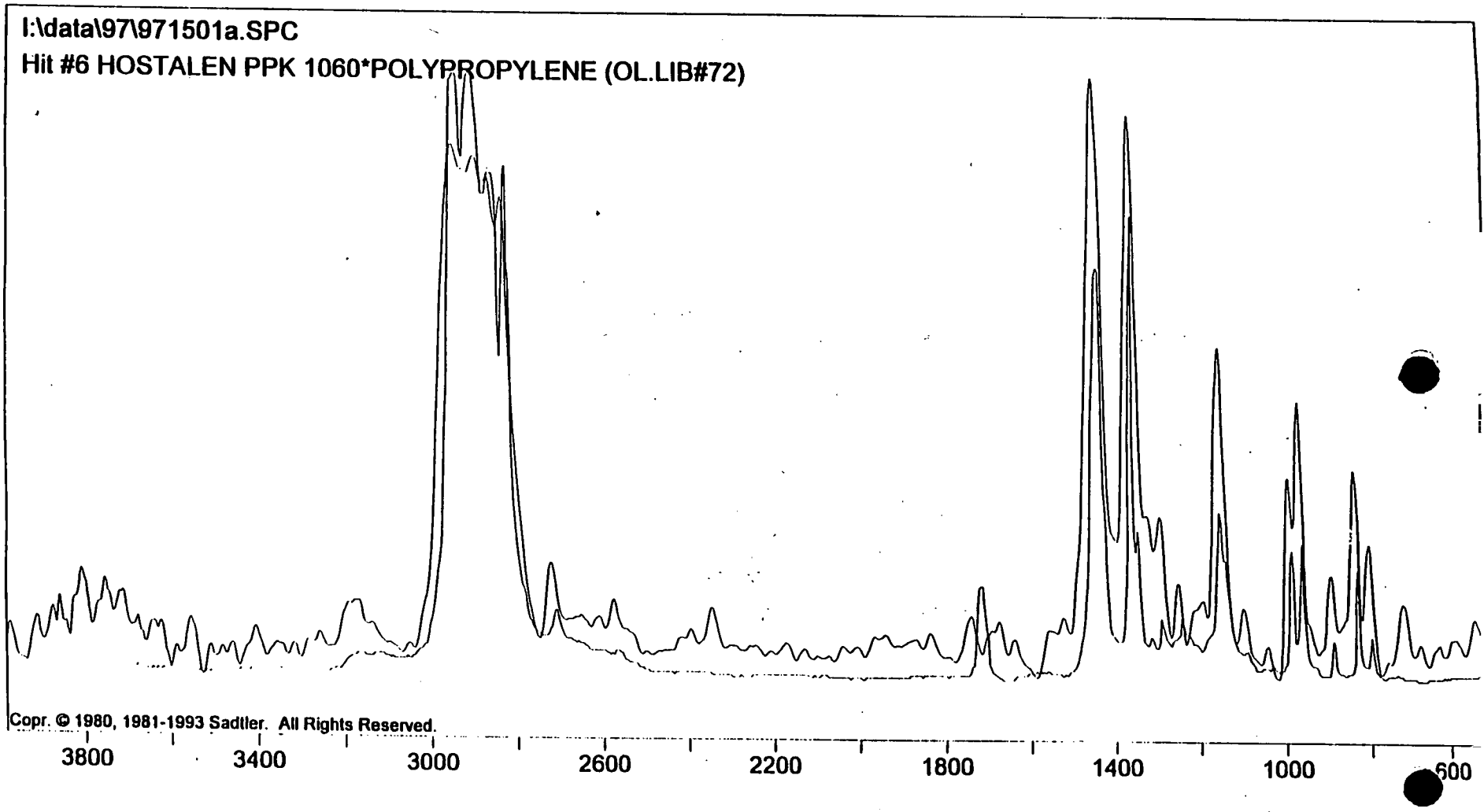


Hit List

Number	Quality Inde	SPC Identification
1	.2043	NO. 26 POLYPROPYLENE COPOLYMER
2	.27934	POLYPRO F-975 D*MODIFIED POLYPROPYLENE
3	.36465	EASTOBOND M-5L*HOT MELT LAMINATING ADHESIVE
4	.40603	POLYPROPYLENE, ATACTIC
5	.42193	BICOR 410 B 3*POLYPROPYLENE FILM
6	.446	HOSTALEN PPK 1060*POLYPROPYLENE
7	.4509	PICCOPALE A-22*ANIONIC EMULSION
8	.45817	PT50.13603 PP STAMYLAN P.POLYPROPYLENE COPOLYMER

Sample Name = 971501a.SPC
Search Date = 10/29/97 3:54 PM
Mask Used = None

Peak Search: None
Full Spectrum Search: Euclidian Distance
Custom Search: None

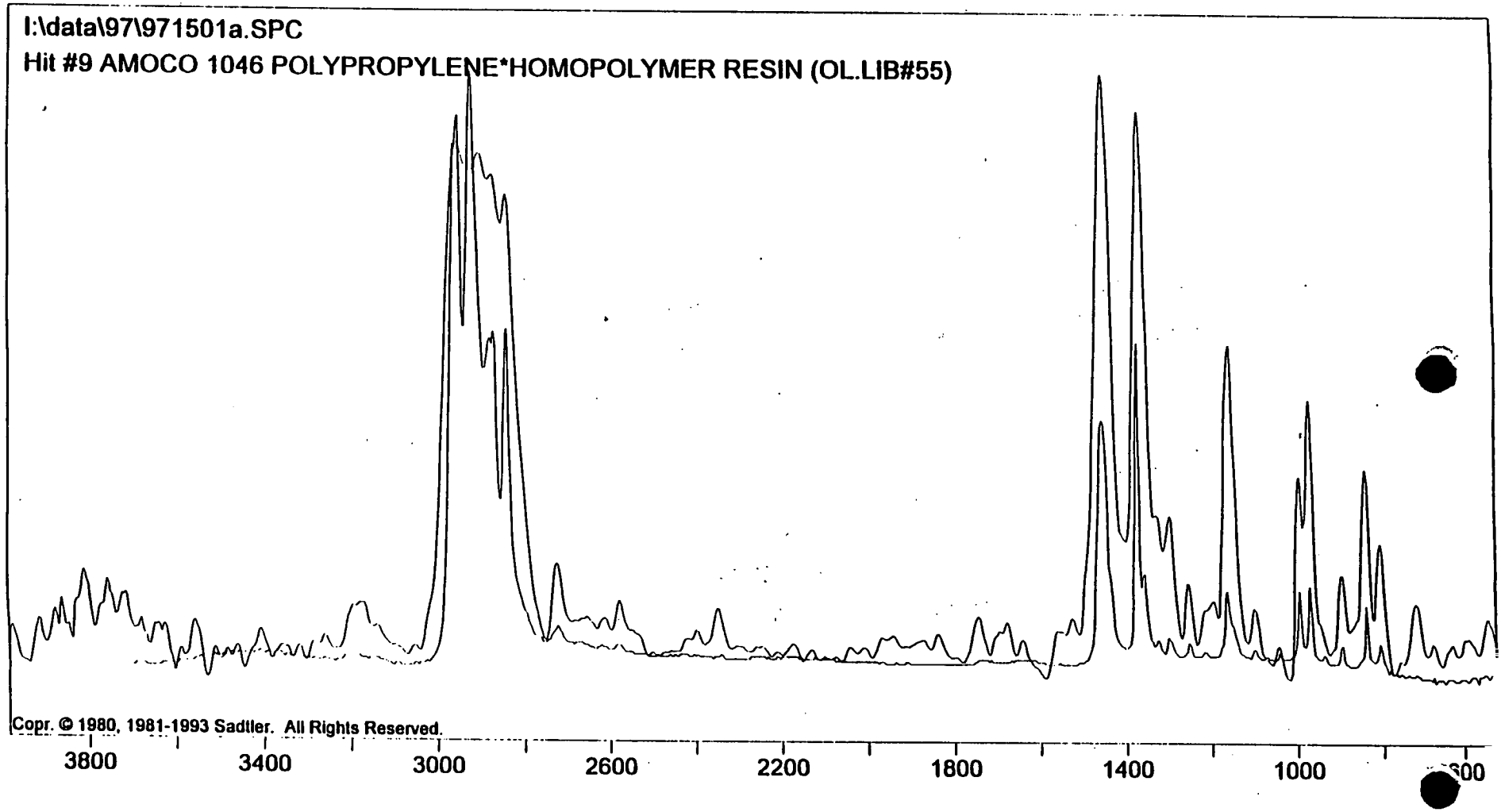


Hit List

Number	Quality Inde	SPC Identification
6	.446	HOSTALEN PPK 1060*POLYPROPYLENE
7	.4509	PICCOPALE A-22*ANIONIC EMULSION
8	.45817	PT50.13603 PP STAMYLAN P.POLYPROPYLENE COPOLYMER
9	.46295	AMOCO 1046 POLYPROPYLENE*HOMOPOLYMER RESIN
10	.4653	POLYPROPYLENE FILM, ISOTACTIC*BIAXIALLY ORIENTED
11	.46649	POLYTAC*AMORPHOUS POLYPROPYLENE
12	.46649	PP8662R*POLYPROPYLENE
13	.46649	PT50.13602 SHELL POLYPROPYLENE

Sample Name = 971501a.SPC
Search Date = 10/29/97 3:54 PM
Mask Used = None

Peak Search: None
Full Spectrum Search: Euclidian Distance
Custom Search: None



Wavenumber (cm-1)

Hit List

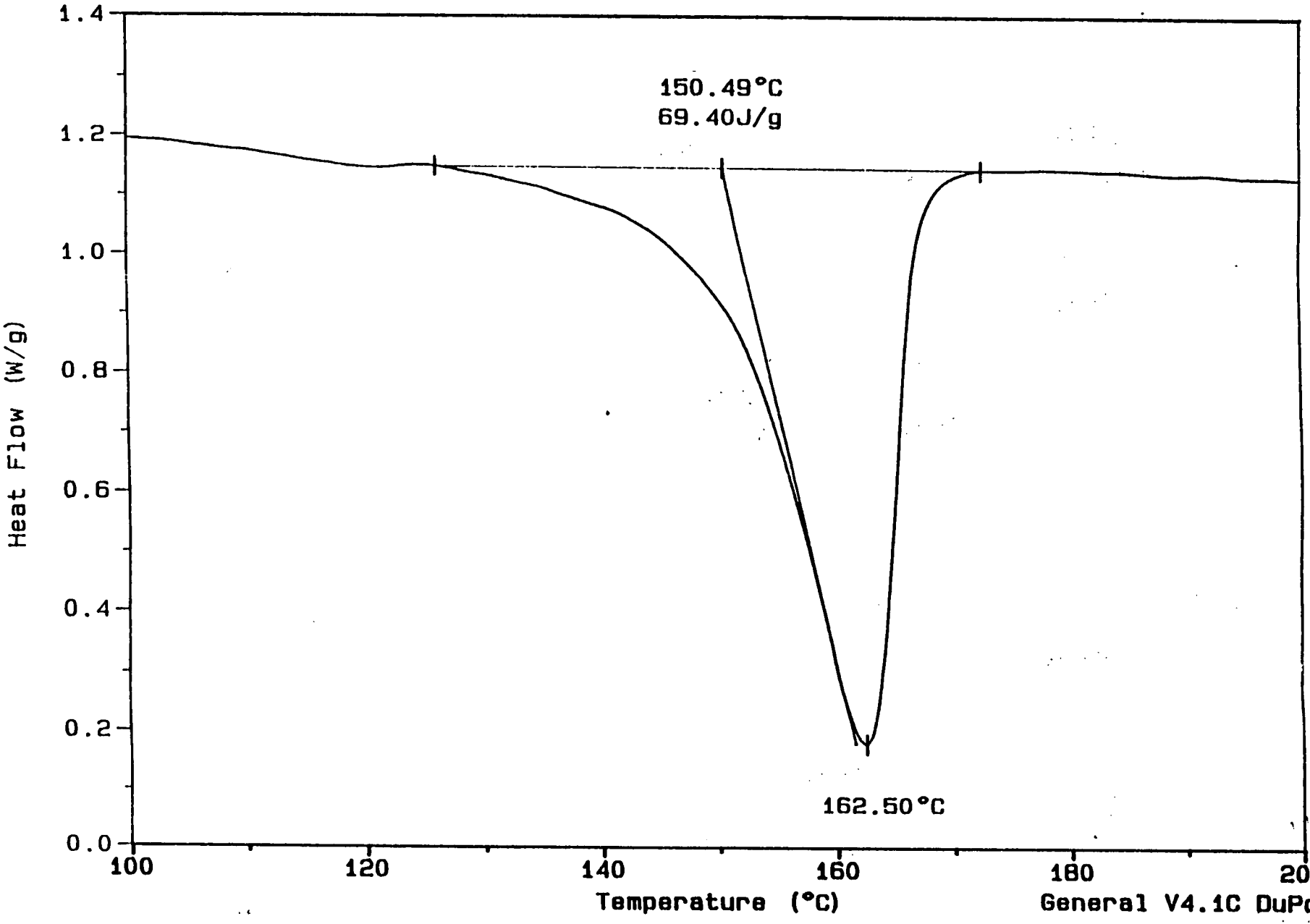
Number	Quality Inde	SPC Identification
1	.2043	NO. 26 POLYPROPYLENE COPOLYMER
2	.27934	POLYPRO F-975 D*MODIFIED POLYPROPYLENE
3	.36465	EASTOBOND M-5L*HOT MELT LAMINATING ADHESIVE
4	.40603	POLYPROPYLENE, ATACTIC
5	.42193	BICOR 410 B 3*POLYPROPYLENE FILM
6	.446	HOSTALEN PPK 1060*POLYPROPYLENE
7	.4509	PICCOPALE A-22*ANIONIC EMULSION
8	.45817	PT50.13603 PP STAMYLAN P.POLYPROPYLENE COPOLYMER

"COUNTER MAID"

Sample: COPOLYMER POLYPROPYLENE
Size: 7.2000 mg
Method: DSC 25/10/300°C
Comment: 10°C/min, NITROGEN PURGE

DSC

File: 971501
Operator: BEHROZ HAMKAR
Run Date: 29-Oct-97 10:53



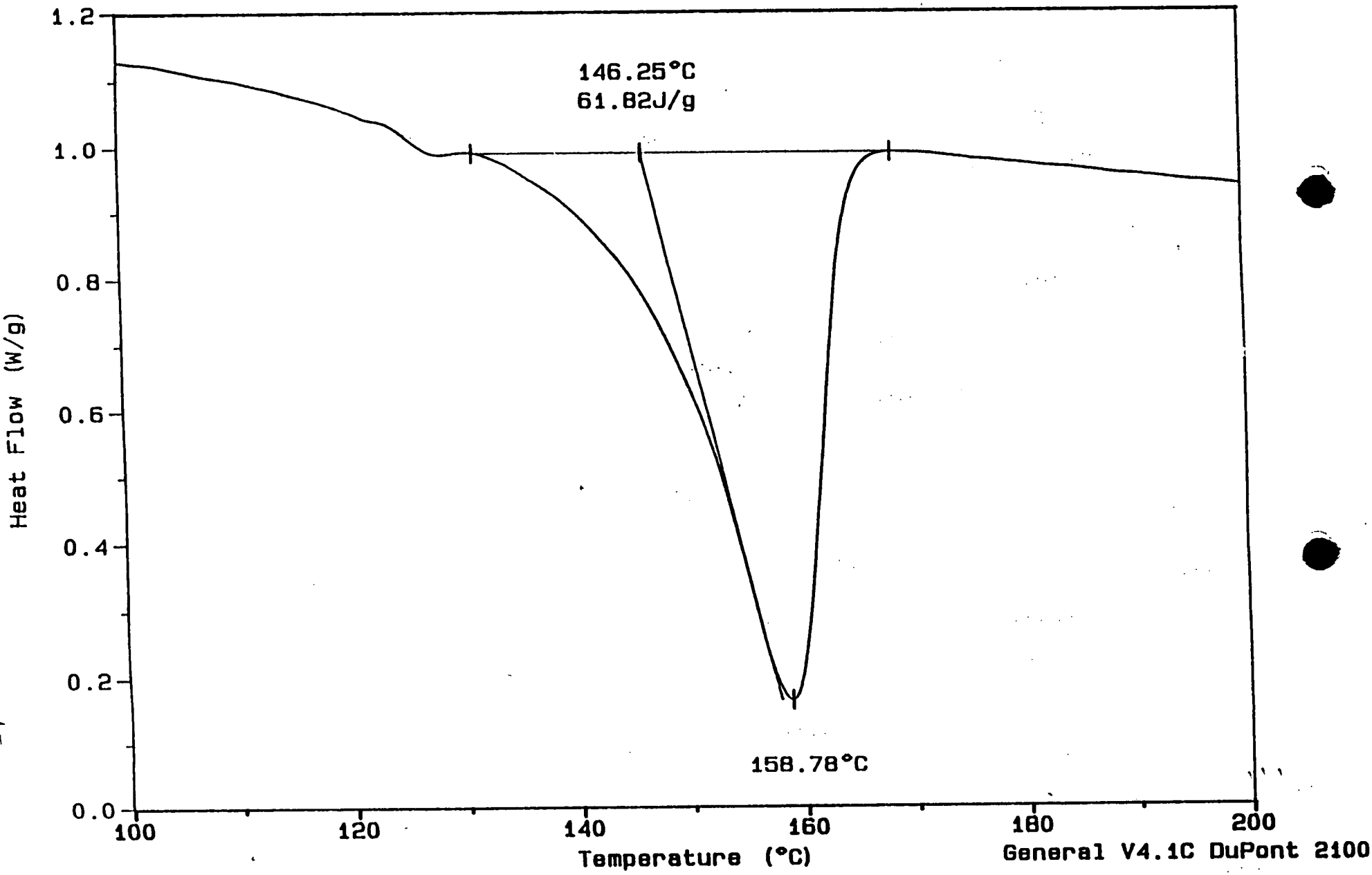
General V4.1C DuPont 210

STANDARD of KNOWN

Sample: NO. 26 POLYPROPYLENE COPOLYMER
Size: 9.1000 mg
Method: DSC 25/10/300°C
Comment: 10°C/min, NITROGEN PURGE

DSC

File: 971501.001
Operator: BEHROZ HAMKAR
Run Date: 30-Oct-97 06:33



Resins and compounds (Cont'd)

Materials	Properties		ASTM test method	Polyetherimide			Polyethylene and ethylene copolymers (see also Thermoplastic elastomers)			
							Low and medium density			
									LDPE copolymers	
				Unfilled	30% glass fiber-reinforced	EMI shielding (conductive); 30% carbon; fiber	Branched homo-polymer	Linear copolymer	Ethylene-vinyl acetate	Ethylene-ethyl acrylate
Processing	1a.	Melt flow (gm./10 min.)	D1238							
	1.	Melting temperature, °C. T_m (crystalline)					98-115	122-124	103-106	
		T_g (amorphous)		215-217	215	215	−25			
	2.	Processing temperature range, °F. (C = compression; T = transfer; I = injection; E = extrusion)		I: 640-800	I: 620-800	I: 600-780	I: 300-450 E: 250-450	I: 350-500 E: 450-500	C: 200-300 I: 350-430 E: 300-380	C: 200-300 I: 250-500
	3.	Molding pressure range, 10^3 p.s.i.		10-20	10-20	10-30	5-15	5-15	1-20	1-20
	4.	Compression ratio		1.5-3	1.5-3	1.5-3	1.8-3.6	3		
	5.	Mold (linear) shrinkage, in./in.	D955	0.005-0.007	0.001-0.002	0.0005-0.002	0.015-0.050	0.020-0.022	0.007-0.035	0.015-0.035
Mechanical	6.	Tensile strength at break, p.s.i.	D638[b]	14,000	25,000-28,500	29,000-34,000	1200-4550	1900-4000	2200-4000	1600-2100
	7.	Elongation at break, %	D638[b]	60	2-5	1-3	100-650	100-965	300-750	700-750
	8.	Tensile yield strength, p.s.i.	D638[b]	15,200	24,500		1300-2100	1400-2800	1200-6000	
	9.	Compressive strength (rupture or yield), p.s.i.	D695	20,300	23,500-24,000	32,000				3000-3600
	10.	Flexural strength (rupture or yield), p.s.i.	D790	22,000	33,000	37,000-45,000				
	11.	Tensile modulus, 10^3 p.s.i.	D638[b]	430	1300-1600	2600-3300	25-41	38-75	7-29	4-7.5
	12.	Compressive modulus, 10^3 p.s.i.	D695	420	550					
	13.	Flexural modulus, 10^3 p.s.i. 73° F.	D790	480	1200-1300	2500-2600	35-48	40-105	7.7	
		200° F.	D790	370	1100					
		250° F.	D790	360	1060					
		300° F.	D790	350	1040					
	14.	Izod impact, ft.-lb./in. of notch (⅛-in. thick specimen)	D256A	1.0-1.2	1.7-2.0	1.2-1.6	No break	1.0-No break	No break	No break
	15.	Hardness Rockwell	D785	M109-110	M125, R123	M127				
		Shore/Barcol	D2240/ D2583				Shore D44-50	Shore D55-56	Shore D17-45	Shore D27-38
Thermal	16.	Coef. of linear thermal expansion, 10^{-6} in./in./°C.	D696	47-56	20-21		100-220		160-200	160-250
	17.	Deflection temperature under flexural load, °F. 264 p.s.i.	D648	387-392	408-420	405-420				
		66 p.s.i.	D648	405-410	412-415	410-425	104-112			
	18.	Thermal conductivity, 10^{-4} cal.-cm./sec.-cm.^{2}-°C.	C177	1.6	6.0-9.3	17.6	8			
Physical	19.	Specific gravity	D792	1.27	1.49-1.51	1.39-1.42	0.917-0.932	0.918-0.940	0.922-0.943	0.93
	20.	Water absorption (⅛-in. thick specimen), % 24 hr.	D570	0.25	0.18-0.20	0.18-0.2	<0.01		0.005-0.13	0.04
		Saturation	D570	1.25	0.9					
	21.	Dielectric strength (⅛-in. thick specimen), short time, v./mil	D149	480	495-630		450-1000		620-760	450-550
		SUPPLIERS[a]		GE Plastics	Akzo; Ferro Eng. Therm.; GE Plastics; ICI Advanced Materials; RTP; Thermofil	Akzo; Ferro Eng. Therm.; ICI Advanced Materials; RTP; Thermofil	Bamberger Polymers; Chevron; Dow Plastics; Du Pont; Eastman; Exxon; Monmouth; Novacor; Quantum, USI; Rexene; Union Carbide; Wash. Penn	Bamberger Polymers; Dow Plastics; Du Pont; Canada; Exxon; Monmouth; Novacor; Quantum, USI; Solvay Polymers; Union Carbide	Chevron; Du Pont; Eastman; Exxon; Quantum, USI; Rexene; Union Carbide	Union Carbide

a—See the Buyers' Guide, p. 681, for additional suppliers of specialty materials and custom compounds.
b—Tensile test method varies with material: D638 is standard for thermoplastics; D651 for rigid thermosetting plastics; D412 for elastomeric plastics; D882 for thin plastics sheeting.
c—Dry, as molded (approximately 0.2% moisture content).
d—As conditioned to equilibrium with 50% relative humidity.
e—Test method in ASTM D4092.
f—*Pseudo* indicates that the thermosetting and thermoplastic components were mixed in the form of pellets or powder prior to fabrication.
g—Dow Plastics samples are unannealed.

Polyethylene and ethylene copolymers (Cont'd)

	Low and medium density (Cont'd)		High density						Crosslinked	
	LDPE copolymers (Cont'd)			Copolymers						
	Ethylene-methyl acrylate	Poly-ethylene homo-polymer	Rubber-modified	Low and medium molecular weight	High molecular weight	Ultra high molecular weight	30% glass fiber-reinforced	20-30% long glass fiber-reinforced	Molding grade	Wire and cable grade
1a.		5-18								
1.	83	130-137	122-127	125-132	125-135	125-138	120-140	120-140		
2.	E: 200-620	I: 350-500 E: 350-525	E: 350-450	I: 375-500 E: 300-500	I: 375-500 E: 375-475	C: 400-500	I: 350-600	I: 525-600	C: 240-450 I: 250-300	E: 250-300
3.		12-15		5-20		1-2	10-20			
4.		2		2						
5.		0.015-0.040		0.012-0.040	0.015-0.040	0.040	0.002-0.006	0.002-0.004	0.007-0.090	[redacted]0
6.	1650	3200-4500	2300-2900	3000-6500	2500-4300	5600-7000	7500-9000	7000-8500	1600-4600	1500-3100
7.	740	10-1200	600-700	10-1300	170-800	420-525	1.5-2.5	2.0-2.5	10-440	160-600
8.	1650	3600-4800	1400-2600	2600-4200	2800-3900	3100-4000				
9.		2700-3600		2700-3600			6000-7000	5000-6000	2000-5500	
10.							11,000-12,000	8000-9500	2000-6500	
11.	12	155-158		90-130	136		700-900	800-900	50-500	
12.									50-150	
13.		145-225		120-180	125-175	130-140	700-800	600-800	70-350	8-14
14.		0.4-4.0		0.35-6.0	3.2-4.5	No break	1.1-1.5	2.5-3.5	1-20	
15.						R50	R75-90	R75-90		
		Shore D66-73	Shore D55-60	Shore D58-70	Shore D63-65				Shore D55-60	Shore D33-57
16.		59-110		70-110	70-110	130-200	48		100	100
17.						110-120	250	240-250	105-145	100-173
		175-198		149-176	154-158	155-180	260-265	250-260	130-225	
18.		11-12		10			8.6-11			[redacted]
19.	0.942-0.945	0.952-0.965	0.932-0.939	0.939-0.960	0.974-0.955	0.94	1.18-1.28	1.09-1.18	0.95-1.45	[redacted]
20.	0.0	<0.01		<0.01		<0.01	0.02-0.06	0.05-0.06	0.01-0.06	0.01-0.06
21.		450-500		450-500		710	500-550		230-550	620-760
	Chevron; Exxon	Allied; Bamberger Polymers; Chevron; Dow Plastics; Du Pont; Exxon; Hoechst Celanese; M A Polymers; Monmouth; Philips; Quantum, USI; Schuman; Shuman; Solvay Polymers; Union Carbide	Allied; M A Polymers	Allied; Bamberger Polymers; Chevron; Dow Plastics; Du Pont; Exxon; Hoechst Celanese; Monmouth; Novacor; Philips; Quantum, USI; Schuman; Solvay Polymers; Union Carbide	Allied; Amoco Chemicals; Chevron; Dow Plastics; Du Pont; Exxon; Hoechst Celanese; Novacor; Philips; Quantum, USI; Solvay Polymers	Hmont USA; Hoechst Celanese	Akzo; Ferro Corp.; Ferro Eng Therm.; ICI Advanced Materials; M A Polymers; Schuman; Thermofil	Akzo	Monmouth; Philips; Quantum, USI	Quantum, USI; Union Carbide

STANDARD of KNOWN

Sample: NO. 27 POLYPROPYLENE HOMOPOLYMER
Size: 7.7000 mg
Method: DSC 25/10/300°C
Comment: 10°C/min, NITROGEN PURGE

DSC

File: 971501.002
Operator: BEHROZ HAMKAR
Run Date: 30-Oct-97 09:31